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**E-Filing**

**FILED**

MAY 16 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FERNANDO LOPEZ-CABALLERO, )  
 )  
Defendant. )  
 )  
 )  
 )  
 )  
 )

No. CR 06-00339 JF

<sup>es</sup>  
[PROPOSED] ORDER EXCLUDING TIME  
FROM THE SPEEDY TRIAL ACT  
CALCULATION (18 U.S.C. §§ 3161(h)(8)(A)  
& 3161(h)(8)(B)(iv))

On May 11, 2006, the parties appeared before the Court for an arraignment on an information. After the parties scheduled an initial appearance before the Honorable Judge Fogel for June 7, 2006 at 9:00 a.m., Assistant United States Attorney Susan Knight requested an exclusion of time under the Speedy Trial Act. She explained that the parties needed additional time to determine whether the defendant's felony conviction for possession of a controlled substance constitutes an aggravated felony for sentencing purposes. The Supreme Court recently granted review in Toledo-Flores v. United States, No. 05-7664, which addresses the same issue, specifically, whether a state felony conviction for simple possession of a controlled substance is

[PROPOSED] ORDER TO EXCLUDE TIME  
CR 06-00339 JF

1 an aggravated felony even though the same crime is misdemeanor under federal law. The  
 2 defendant, through his attorney, Assistant Federal Public Defender Angela Hansen, agreed to the  
 3 exclusion. In addition, the parties stipulated and agreed that an exclusion under Speedy Trial Act  
 4 from May 11, 2006 to June 7, 2006 was appropriate based on the defendant's need for effective  
 5 preparation of counsel.

6 SO STIPULATED.

KEVIN V. RYAN  
 United States Attorney

7 DATED: \_\_\_\_\_

/s/  
 8 SUSAN KNIGHT  
 Assistant United States Attorney

9 DATED: \_\_\_\_\_

/s/  
 10 ANGELA M. HANSEN  
 Assistant Federal Public Defender

11  
 12  
 13 Accordingly, the Court HEREBY ORDERS that the time between May 11, 2006 and  
 14 June 7, 2006 is excluded under the Speedy Trial Act. The Court finds that the failure to grant the  
 15 requested continuance would deny the defendant effective preparation of counsel. The Court  
 16 finds that the ends of justice served by granting the requested continuance outweigh the best  
 17 interest of the public and the defendant in a speedy trial and in the prompt disposition of criminal  
 18 cases. The Court therefore concludes that this exclusion of time should be made under 18 U.S.C.  
 19 §§ 3161(h)(8)(A) and 3161(h)(8)(B)(iv).

20 IT IS SO ORDERED.

21  
 22 May 16, 2006  
 Dated

  
 23 RICHARD SEEBORG  
 United States Magistrate Judge